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CABEAU, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

CABEAU, INC., a California corporation,

Plaintiff,

vs.

ATOMI, INC., a New York corporation,  
and DOES 1-10 inclusive,

Defendant.

**CASE NO. 2:15-CV-00303**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

- (1) PATENT INFRINGEMENT [35  
U.S.C. § 271];**
- (2) FEDERAL UNFAIR  
COMPETITION AND TRADE  
DRESS INFRINGEMENT [15  
U.S.C. § 1125(a)]; and**
- (3) COMMON LAW UNFAIR  
COMPETITION**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Cabeau, Inc. ("Cabeau" or "Plaintiff"), for its complaint against defendant  
2 Atomi, Inc. ("Atomi" or "Defendant"), alleges as follows:

3 **PARTIES**

4 1. Plaintiff Cabeau, Inc. is a corporation duly organized and existing under the  
5 laws of the State of California, with a principal place of business located at 5850 Canoga  
6 Avenue, Suite 100, Woodland Hills, California 91367.

7 2. On information and belief, Defendant Atomi, Inc. is a New York corporation  
8 having a place of business at 10 W. 33 Street, Suite 520, New York, New York 10001.

9 3. Defendants Does 1-10, inclusive, are sued herein under fictitious names.  
10 Their true names and capacities are unknown to Cabeau. When their true names and  
11 capacities are ascertained, Cabeau will amend this complaint by inserting their true  
12 names and capacities. Cabeau is informed and believes and thereon alleges that each of  
13 Does 1-10 is responsible in some manner for the occurrences alleged herein and that  
14 Cabeau's damages have been and are being proximately caused by such defendants.

15 **JURISDICTION AND VENUE**

16 4. Jurisdiction in this Court arises under the patent laws of the United States,  
17 35 U.S.C. §§ 271, 281, and 289, and the provisions of 15 U.S.C. §§ 1121 and 1125. This  
18 complaint also alleges violations of state law and common law. This Court has  
19 jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a), 1338(b), 1367(a),  
20 and 1400(b).

21 5. This Court has personal jurisdiction over Defendant because it has  
22 committed one or more of the infringing acts complained of herein in California and in  
23 this district, it has sales outlets in California and in this district, and it does regular  
24 business in California and in this district. This Court has personal jurisdiction over  
25 Defendant because, among other things, Defendant conducts business in the State of  
26 California and in this judicial district and thus enjoys the privileges and protections of  
27 California law.

28 6. Venue in this Court is proper at least under the provisions of 28 U.S.C. §§

1 1391(b) and 1391(c) because a substantial part of the claims arose in this district.

2 **BACKGROUND**

3 7. This is an action for design patent infringement, trade dress infringement, and  
4 unfair competition.

5 8. Cabeau is a multi-million dollar leader in the travel product industry. Cabeau's  
6 flagship product is the EVOLUTION® PILLOW, one of the best-selling travel pillows  
7 worldwide.

8 9. Cabeau is the owner, by assignment, of United States Design Patent No.  
9 D619,402 (“the ‘402 Patent”) titled “Travel Pillow.” The ‘402 Patent was duly and legally  
10 issued by the United States Patent and Trademark Office on July 13, 2010. A true and  
11 correct copy of the ‘402 Patent is attached as Exhibit A.

12 10. As the owner of the ‘402 Patent, Cabeau is authorized and has standing to  
13 bring legal action to enforce all rights arising under the ‘402 Patent.

14 11. Defendant has been, and presently is, willfully infringing the ‘402 Patent by  
15 making and selling pillows that embody the patented invention claimed by the ‘402  
16 Patent.

17 12. In order to identify its pillow as emanating from a single source, Cabeau  
18 created a new and unique trade dress embodied by the EVOLUTION® PILLOW.

19 13. Trade dress embodied by the EVOLUTION® PILLOW is shown in  
20 comparison to Defendant's ULTIMATE PILLOW below:

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Cabeau EVOLUTION® PILLOW	Atomi ULTIMATE PILLOW
	

14. Defendant's ULTIMATE PILLOW infringes Cabeau's EVOLUTION® PILLOW trade dress. Defendant's conduct is likely to cause confusion, mistake, and/or deception among the general purchasing public. Defendant has profited and is profiting from such trade dress infringement and unfair competition.

### FIRST CAUSE OF ACTION

#### (Design Patent Infringement, U.S. Des. Pat. No. D619,402)

15. Cabeau realleges and incorporates by reference the full text of all of the foregoing numbered paragraphs, photographs, figures, and tables as though each such paragraph, photograph, figure, and table has been fully set forth herein.

16. On July 13, 2010, the United States Patent and Trademark Office issued U.S. Des. Pat. No. D619,402 (hereinafter "the '402 Patent"). Effective as of the date of application, January 15, 2010, Cabeau is the owner of the entire right, title, and interest in and to the patent application and the '402 Patent issuing therefrom, as shown by the USPTO Assignment Database. *See* Exhibit B. The '402 Patent was duly and legally issued by the United States Patent and Trademark Office on July 13, 2010.

17. Cabeau's ownership of the '402 Patent includes without limitation the exclusive right to enforce the '402 Patent, the exclusive right to file actions based on

1 infringement of the '402 Patent, and the exclusive right to recover damages or other  
2 monetary amounts for infringement of the '402 Patent and to be awarded injunctive relief  
3 pertaining to the '402 Patent, and as such Cabeau has standing to bring legal action to  
4 enforce all rights arising under the '402 Patent.

5 18. Defendant has been, and presently is, infringing the '402 Patent within this  
6 judicial district and elsewhere by making, using, selling, offering to sell in, and/or  
7 importing into the United States travel pillows that embody the patented invention  
8 claimed by the '402 Patent. Such products include, by way of example and without  
9 limitation, Defendant's ULTIMATE PILLOW product. Defendant will continue to  
10 manufacture and sell its ULTIMATE PILLOW unless enjoined by this Court.

11 19. Defendant has had actual knowledge of the '402 Patent since at least as early  
12 as December 19, 2014. Defendant continues to, *inter alia*, make, sell, offer for sale in,  
13 and/or import into the United States infringing travel pillows, thus intending for its  
14 actions to result in infringement or disregarding an objectively high likelihood that such  
15 actions will result in infringement. Defendant's infringement is therefore willful.

16 20. On information and belief, Defendant has knowingly induced infringement,  
17 and has had specific intent to induce infringement of the '402 Patent by, *inter alia*,  
18 marketing, selling, supporting sales, and/or distributing infringing travel pillows.  
19 Defendant's customers, including without limitation manufacturers and retailers, directly  
20 infringe the '402 Patent by, *inter alia*, making, using, selling, offering to sell in, and/or  
21 importing into the United States infringing travel pillows.

22 21. The ULTIMATE PILLOW so closely resembles the invention claimed by  
23 the '402 Patent that an ordinary observer would be deceived into purchasing the  
24 ULTIMATE PILLOW in the mistaken belief that it includes the invention claimed by the  
25 '402 Patent. Defendant's ULTIMATE PILLOW infringes the '402 Patent in violation of  
26 35 U.S.C. §§ 271 and 289.

27 22. Due to Defendant's infringement of the '402 Patent, Cabeau has suffered, is  
28 suffering, and will continue to suffer irreparable injury for which Cabeau has no adequate

1 remedy at law. Cabeau is therefore entitled to a permanent injunction against Defendant's  
2 further infringing conduct.

3 23. Defendant has profited and is profiting from its infringement of the '402  
4 Patent and Cabeau has been and is being damaged and losing profit by such infringement.  
5 Cabeau is therefore entitled to recover damages from the Defendant and the total profit  
6 derived from such infringement, all in amount to be proven at trial, together with interest  
7 and costs as fixed by the Court.

## 8 **SECOND CAUSE OF ACTION**

### 9 **(EVOLUTION® PILLOW Trade Dress – Federal Unfair Competition** 10 **and Trade Dress Infringement; 15 U.S.C. § 1125(a))**

11 24. Cabeau realleges and incorporates by reference the full text of all of the  
12 foregoing numbered paragraphs, photographs, figures, and tables as though each such  
13 paragraph, photograph, figure, and table has been fully set forth herein.

14 25. Defendant makes, uses, sells, offers to sell, and/or imports a product, the  
15 ULTIMATE PILLOW, that includes similar packaging and a substantially identical  
16 design to Cabeau's EVOLUTION® PILLOW, which taken alone or in combination are  
17 likely to cause confusion among consumers and constitute trade dress infringement and  
18 unfair competition in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

19 26. Cabeau has acquired exclusive and protectable trade dress rights embodied  
20 in its EVOLUTION® PILLOW trade dress. By the acts and omissions set forth above,  
21 Defendant is violating Lanham Act § 43(a), 15 U.S.C. § 1125(a), and is unfairly  
22 competing with Cabeau.

23 27. Defendant's use in commerce of the EVOLUTION® PILLOW trade dress  
24 on its ULTIMATE PILLOW constitutes a false designation of origin and a false and  
25 misleading representation of fact which is likely to cause confusion, and to cause  
26 mistake, and to deceive by wrongly suggesting that Defendant's ULTIMATE PILLOW  
27 has some affiliation, connection, or association with Cabeau. Such use by Defendant of  
28 Cabeau's EVOLUTION® PILLOW trade dress is also likely to cause confusion, and to



1 cause mistake, and to deceive as to the origin, sponsorship, or approval of Defendant's  
2 ULTIMATE PILLOW. Such use by Defendant of its ULTIMATE PILLOW constitutes  
3 trade dress infringement in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

4 28. Defendant has infringed, and continues to infringe, Cabeau's  
5 EVOLUTION® PILLOW trade dress. Defendant's ULTIMATE PILLOW infringes  
6 Cabeau's EVOLUTION® PILLOW trade dress.

7 29. Defendant's conduct is likely to cause confusion, mistake, and deception  
8 among the general purchasing public, and interfere with Cabeau's ability to sell and profit  
9 from its EVOLUTION® PILLOW product.

10 30. Defendant's conduct as described above is also likely to harm or extinguish  
11 the current ability of Cabeau's EVOLUTION® PILLOW trade dress to indicate that the  
12 product emanates from a single source. Defendant's conduct as described above harms  
13 the goodwill and reputation associated with Cabeau's EVOLUTION® PILLOW trade  
14 dress.

15 31. Cabeau has suffered, is suffering, and will continue to suffer irreparable  
16 injury for which Cabeau has no adequate remedy at law. Cabeau is therefore entitled to a  
17 permanent injunction against Defendant's further infringing conduct.

18 32. Defendant has profited and is profiting from such trade dress infringement  
19 and unfair competition, and Cabeau has been and is being damaged and losing profit by  
20 such infringement and unfair competition. Cabeau is therefore entitled to recover  
21 damages and profits from Defendants in an amount to be proved at trial as a consequence  
22 of Defendant's violations of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

### 23 **THIRD CAUSE OF ACTION**

#### 24 **(Common Law Unfair Competition)**

25 33. Cabeau realleges and incorporates by reference the full text of all of the  
26 foregoing numbered paragraphs, photographs, figures, and tables as though each such  
27 paragraph, photograph, figure, and table has been fully set forth herein.

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1           34. Defendant is willfully, fraudulently, oppressively, maliciously, and  
2 unlawfully attempting to pass off, and is passing off, its infringing pillows as those  
3 approved and/or authorized by Cabeau.

4           35. Defendant's use in commerce of the ULTIMATE PILLOW continues to  
5 confuse and deceive consumers as to the source and origin of the goods and services for  
6 which Cabeau has invested substantial time, effort, and money in developing, and further  
7 damages Cabeau's goodwill and reputation.

8           36. Defendant has been palming off its goods as Cabeau's goods. Consumers  
9 have been and continue to be confused as to whether Defendant's ULTIMATE PILLOW  
10 is affiliated with Cabeau.

11           37. The damage suffered by Cabeau is irreparable and will continue unless  
12 Defendant is restrained by this Court from the commission of these acts.

13           38. Defendant's willful, deliberate, and malicious conduct constitutes unfair  
14 competition with Cabeau.

15           39. Such conduct by Defendant is the sole reason for Defendant's ability to  
16 market and sell its unauthorized copies of pillows that embody Cabeau's EVOLUTION®  
17 PILLOW trade dress.

18           40. Defendant is being unjustly enriched through such flagrantly unlawful  
19 conduct and should be punished therefor.

20           41. Cabeau has no adequate remedy at law in that the continuing nature of the  
21 unfair competition will result in irreparable harm to Cabeau should Defendant not be  
22 enjoined from its acts of unfair competition.

23           42. A complete recitation of the damages suffered by Cabeau as a result of this  
24 unfair competition must await discovery of Defendant's books and records.

25                           **PRAYER FOR RELIEF**

26           WHEREFORE, Plaintiff Cabeau, Inc. prays for relief as follows:

27           1. A judgment declaring that Defendant has:

28               a. infringed Cabeau's '402 Patent;



- b. infringed Cabeau's EVOLUTION® PILLOW trade dress;
- c. competed unfairly with Cabeau;
- d. injured Cabeau's business reputation by the unauthorized use of Cabeau's EVOLUTION® PILLOW trade dress;
- e. willfully violated applicable laws of the United States and of the states where Defendant's goods have been sold, all to the detriment of Cabeau;

2. That the Defendant, its officers, agents, servants, employees, attorneys, assigns, and all persons in active concert with or participation with them be forthwith permanently enjoined and restrained from:

- a. infringing or inducing infringement of Cabeau's '402 Patent;
- b. infringing or inducing infringement of Cabeau's EVOLUTION® PILLOW trade dress;
- c. using Cabeau's EVOLUTION® PILLOW trade dress alone or in combination with any other elements, to advertise or identify Defendant's goods or services;
- d. unfairly competing with Cabeau in any manner whatsoever;
- e. causing likelihood of confusion, or injury to Cabeau's business and to the reputation of Cabeau's marks, symbols, trade dress, labels, or forms of advertising or promotion;
- f. engaging in any acts or activities directly or indirectly calculated to trade upon Cabeau's EVOLUTION® PILLOW trade dress or the reputation or goodwill of Cabeau, or in any way to compete unfairly with Cabeau;

3. For a judgment directing that any pillows, goods, labels, emblems, and/or packaging in the possession or under the control of Defendants which infringe the '402 Patent, or any colorable imitation thereof, but not emanating from Cabeau, be delivered up and destroyed within 10 days of

1 entry of judgment, and that all instrumentalities used in the production of  
2 such pillows, goods, labels, emblems, or packaging, including any and all  
3 items, objects, tools, machines, mold, and equipment used in such  
4 production, be delivered up and destroyed within 10 days of entry of  
5 judgment;

6 4. For a judgment directing Defendant to recall all infringing goods and any  
7 other materials sold, distributed, advertised, or marketed which infringe any  
8 and all of the '402 Patent, or any colorable imitation or facsimile thereof, but  
9 not emanating from Cabeau;

10 5. For a judgment against Defendant awarding Cabeau damages, lost profits,  
11 reasonable royalties, and other monetary amounts including without  
12 limitation:

13 a. all damages sustained by Cabeau as a result of Defendant's unlawful  
14 infringement of the '402 Patent, together with appropriate interest on  
15 such damages and that such damages be trebled, pursuant to 35 U.S.C.  
16 § 284;

17 b. Defendant's total profit from Defendant's sales of pillows that infringe  
18 the '402 Patent, and all other remedies provided by 35 U.S.C. § 289;

19 c. all remedies provided for by 15 U.S.C. § 1117(a), including but not  
20 limited to all damages sustained by Cabeau as a result of Defendant's  
21 unlawful infringement of Cabeau's EVOLUTION® PILLOW trade  
22 dress, together with appropriate interest on such damages, and that  
23 such damages be trebled;

24 d. all remedies provided for by 15 U.S.C. § 1117(a), including but not  
25 limited to all profits derived by Defendant from the sale of goods by  
26 the direct or indirect use of any pillow that embodies Cabeau's  
27 EVOLUTION® PILLOW trade dress or any colorable imitations or  
28 facsimiles thereof, and that such profits be trebled;

1 e. all damages sustained by Cabeau on account of unfair competition,  
2 lost business opportunities, and any other damage suffered by Cabeau  
3 as a result of Defendant's acts described in this complaint, and that  
4 such damages be trebled;

5 6. For an order directing Defendant to pay punitive damages to Cabeau;

6 7. For an order directing Defendant to pay restitution to Cabeau;

7 8. For an award of attorneys' fees pursuant to 35 U.S.C. § 285 and pursuant to  
8 15 U.S.C. § 1117;

9 9. For an award of pre-judgment interest at the maximum rate allowed by law;

10 10. For the costs of suit herein; and

11 11. For such additional further relief that the Court may deem just and proper  
12 under the circumstances.

13  
14 Respectfully submitted,

15  
16  
17 DATED: 14 January 2015

18 By: /s/ Corey A. Donaldson

19 Jaye G. Heybl

20 Corey A. Donaldson

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CABEAU, INC.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1, Plaintiff Cabeau, Inc. hereby demands a trial by jury of any and all issues triable of right by a jury pursuant to the Seventh Amendment to the United States Constitution or as given by a statute of the United States.

DATED: 14 January 2015

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